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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SHIMMICK CONSTRUCTION  
11 COMPANY, INC./OBAYASHI  
12 CORPORATION,

Plaintiff,

13 v.

14 OFFICINE MECCANICHE  
15 GALLETTI-O.M.G. S.R.L., *et al.*,

16 Defendants.  
17

Case No. 13-cv-2700-BAS(JLB)

**ORDER DENYING PLAINTIFF'S  
MOTION TO FILE DOCUMENTS  
UNDER SEAL**

**[ECF Nos. 107, 112]**

18 Pending before the Court is Plaintiff's motion to file portions of exhibits  
19 supporting its opposition to Defendants' summary-judgment motion under seal. To  
20 date, Defendants have not opposed.

21 For the following reasons, the Court **DENIES** Plaintiff's motion to file  
22 documents under seal. (ECF No. 112.)  
23

24 **I. ANALYSIS**

25 Two standards generally govern motions to seal documents. *Pintos v. Pac.*  
26 *Creditors Ass'n*, 605 F.3d 665, 677 (9th Cir. 2010). The standard varies depending on  
27 whether the documents are general judicial records or "private materials unearthed  
28 during discovery." *Id.* at 678-79.

1            “[A] ‘compelling reasons’ standard applies to most judicial records.” *Pintos*, 605  
2 F.3d at 677-78. A party seeking to seal judicial records must show that “compelling  
3 reasons supported by specific factual findings . . . outweigh the general history of  
4 access and the public policies favoring disclosure.” *Id.* at 678 (quoting *Kamakana v.*  
5 *City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006)) (internal quotation  
6 marks omitted). This standard derives from the common-law right “to inspect and copy  
7 public records and documents, including judicial records and documents.” *Id.*; *see also*  
8 *Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). As long as the particular  
9 document is not one that is “traditionally kept secret,” the presumption of access  
10 “extends to pretrial documents filed in civil cases, including materials submitted in  
11 connection with motions for summary judgment.” *Foltz v. State Farm Mut. Auto. Ins.*  
12 *Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). However, this right to access is not absolute.  
13 “[C]ompelling reasons’ sufficient to outweigh the public’s interest in disclosure and  
14 justify sealing court records exist when such ‘court files might have become a vehicle  
15 for improper purposes,’ such as the use of records to gratify private spite, promote  
16 public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447  
17 F.3d at 1178-79 (citing *Nixon*, 435 U.S. at 598). But “[t]he mere fact that the  
18 production of records may lead to a litigant’s embarrassment, incrimination, or  
19 exposure to further litigation will not, without more, compel the court to seal its  
20 records.” *Id.* (citing *Foltz*, 331 F.3d at 1136).

21            A less burdensome “good cause” standard applies when a party seeks to seal  
22 “private materials unearthed during discovery,” which are not part of the judicial  
23 record. *Pintos*, 605 F.3d at 678. The court applies the lower burden to such documents  
24 because “[t]he cognizable public interest in judicial records that underlies the  
25 ‘compelling reasons’ standard does not exist for documents produced between private  
26 litigants.” *Id.* (citing *Kamakana*, 447 F.3d at 1180). Under such circumstances,  
27 Federal Rule of Civil Procedure 26(c) governs. Rule 26(c) provides that a trial court  
28 may grant a protective order “to protect a party or person from annoyance,

1 embarrassment, oppression, or undue burden or expense.” The relevant standard for  
2 the purposes of Rule 26(c) is whether “‘good cause’ exists to protect th[e] information  
3 from being disclosed to the public by balancing the needs for discovery against the  
4 need for confidentiality.” *Pintos*, 605 F.3d at 678 (citing *Phillips ex rel. Estates of*  
5 *Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). Furthermore,  
6 documents attached to non-dispositive motions must also meet the less burdensome  
7 standard under Rule 26(c). *Foltz*, 331 F.3d at 1135 (discussing *Phillips*, 307 F.3d at  
8 1213); *see also Pintos*, 565 F.3d at 678-79; *Kamakana*, 447 F.3d at 1180.

9 “The ‘compelling reasons’ standard is invoked even if the dispositive motion,  
10 or its attachments, were previously filed under seal or protective order.” *Kamakana*,  
11 447 F.3d at 1179. However, the basis of Plaintiff’s request to seal is that certain  
12 documents were designated “confidential” in accordance with the protective order.  
13 (Pl.’s Mot. 9:20–10:13.) Each exhibit identified for sealing, amounting to nineteen  
14 exhibits in total, is an email communication where Plaintiff asserts “confidentiality of  
15 this document” and contends that the document contains “commercially sensitive  
16 information about non-parties.” (*Id.* at 3:5–8:21.) Plaintiff adds that several of these  
17 exhibits should be sealed also due to pricing information, pricing negotiations, or third-  
18 party names. (*Id.*) The existence of the protective order is inadequate to rebut the  
19 presumption of access afforded to the public. *See Foltz*, 331 F.3d at 1136.  
20 Furthermore, Plaintiff fails to explain how the identified documents might become a  
21 vehicle for improper purposes. *See Kamakana*, 447 F.3d at 1178-79. There is no  
22 indication that the identified documents may be used to “gratify public spite, promote  
23 public scandal, circulate libelous statements, or release trade secrets.” *See id.*

24 Because Plaintiff fails to provide a compelling reason to seal the identified  
25 documents, Plaintiff also fails to justify sealing those documents. *See Kamakana*, 447  
26 F.3d at 1178-79; *Foltz*, 331 F.3d at 1136.

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1 **II. CONCLUSION & ORDER**

2 In light of the foregoing, the Court **DENIES** Plaintiff's amended motion to file  
3 documents under seal. (ECF No. 112.) Accordingly, Plaintiff shall file all of the  
4 remaining exhibits in support of its opposition on the public docket. Furthermore, the  
5 Court also **TERMINATES** Plaintiff's previously filed motion to file documents under  
6 seal (ECF No. 107) in light of its explanation that that motion is substantively identical  
7 to this one. (Pl.'s Mot. 1 n.1.)

8 **IT IS SO ORDERED.**

9  
10 **DATED: October 5, 2015**

11   
12 **Hon. Cynthia Bashant**  
13 **United States District Judge**